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ABSTRACT

This document was designed to assist computer users with the ethical issues created by the widespread use of microcomputers at Drexel University, where there were over 5,000 Macintosh microcomputers in use on the campus as of the fall of 1984. It explains to faculty, students, and staff what the university expects and the law demands in regard to responsible behavior in the use of microcomputers. A copy of the university policy on access to computers and computer software use is provided, as well as an explanation of relevant Pennsylvania law on computer abuse and aspects of the national copyright law. Penalties for law violations are also discussed. Examples of situations involving legal and ethical questions which might occur on any university campus are provided for both students and faculty; topics covered include paying or receiving pay for copies of computer software programs, illegal copying of copyrighted programs, non-disclosure agreements, and illegal software. Also included are samples of letters to students and to faculty and staff introducing the computer and software abuse policy packet. (LMM)

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COMPUTER AND SOFTWARE ABUSE POLICIES

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MWPS A 84-7
November, 1984

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Background

During March of 1984, over 2,000 Macintosh computers were distributed to faculty and students at Drexel University. By the following October, an additional 3,000 Macs were in use on the campus. This rapid and large-scale infusion of microcomputing into the University environment placed computing in the hands of many individuals for the first time.

During Spring term, 1984, a group of administrators and faculty (primarily philosophers and ethicists) met to discuss the need for and the manner in which the University should deal with ethical issues which might be exacerbated by the widespread use of microcomuters on campus. Although there was considerable disagreement as to the appropriate course of action, one related need was clearly apparent from these discussions. The University had a legal, moral, and educational responsibility to inform all members of the Drexel community (faculty, students, and staff) as to what the University expects and the law demands in regard to responsible behavior in the use of microcomputers. The materials contained in this document were developed to meet this need.

In an attempt to identify the scope and nature of the University's legal responsibilities and to clarify the legal status of a number of actions commonly associated with computer use, a series of meetings with the local District Attorney's office were held. The University received immediate and extensive assistance from both the Director of the Investigations Division and the Assistant District Attorney assigned to computer-related crime. The University was very fortunate in having the assistance of this particular Assistant D.A. in that she is a nationally known expert in this field, one of the drafters of the existing relevant Pennsylvania state laws, and familiar with the university environment and student attitudes (having taught a university-level course on the legal aspects of computer use and having been instrumental in developing a policy on ethical and legal use of computing at another

university). She, and her Division Director, were also very anxious to help us do as much as we could to prevent illegal use of computers by students on our campus in that prosecution of any crimes committed by this group would probably end up their offices, either as their sole responsibility or in conjunction with the FBI.

A small committee was formed to develop a series of documents for distribution to those who bought computers through the University. This committee included the Dean of Students, the Chair of the Faculty Council, the Director of the Microcomputing Program, a representative of the District Attorney's office (the Assistant D.A. mentioned above), and the Special Projects Coordinator of the Microcomputing Program.

Three types of materials were developed: a University policy on computer and computer software use, information on pertinent laws, and a series of example situations to provide concrete examples of situations which might easily arise on campus, the legality of which might be questioned.

The University policy turned out to be the most difficult to develop. Although it seemed to present an ethical standard very much like the ethical standards accepted for other forms of academic behavior, members of the Faculty Council resisted its inclusion and asked that it be placed before all members of the faculty for their approval. At the time of this writing, this vote has not occurred. For this reason, the policy document is marked "Draft".

Pertinent clauses from the law code of the Commonwealth of Pennsylvania were included and explained. (An additional sheet was prepared to explain the penalties associated with these laws.) The only national legislation in place at the time was the Copyright Act. A brief summary of relevant aspects of that law was drawn up based upon a paper presented at the 1984 Annual Meeting of the American Bar Association, with some addenda from the Director of the Drexel University library.

The example situations were considered an essential part of the package in that they could serve as guideposts for behavior. To develop these examples, a series of questions were drawn up based on a "What if..." model, (e.g., What if you see a student...? or What if you make a copy...?). These questions were brought to the Assistant DA for her opinion based on her knowledge of existing legal precedents. Using her answers as a guide, the examples section was developed.

All documents developed were reviewed by the adminstrators and faculty who originally met in the Spring, members of the small committee developing the materials, the two liaisons at the District Attorney's office, and others who expressed an interest in the project or who were contacted for their opinions on specific portions of the materials. In addition, background information for the development effort was assembled from conversations with individuals at other universities and with members of the legal profession who specialize in computer law.

To further deepen the University's understanding of the legal and ethical issues involved, a faculty member from the College of Information Studies was funded to develop a bibliography of sources on ethical and legal issues related to information technology. The resulting bibliography, which is currently being updated, is available for searching within the Resources Center of the College of Information Studies. In addition, two senior administrators from the University attended a two-day seminar on computer law in order to develop a fuller sense of the legal issues involved.

Overview

The following materials have been prepared for distribution to faculty and students at Drexel University in order to help them make decisions and guide their own behavior in regard to the use and possible misuse of computers or computer software.

- Drexel University Policy on Access to Computers and Computer Software*
- Relevant PA Law on Computer Abuse
- Explanation of Penalties
- Example Situations
  - Examples for Students
  - Examples for Faculty
- Federal Copyright Legislation
- Dear MacUser (letter to students introducing the packet)
- Dear Faculty and Staff MacUsers (letter to faculty and staff introducing the packet)

The University Policy on Access to Computers and Computer Software is still in draft form, pending final approval by a vote of the entire University faculty.

If you would like to use these materials in any way, please feel free to do so. If you have any questions about them, contact Shirley Smith, Coordinator of Special Projects, Microcomputing Program, Drexel University, (215) 895-2667.

* Pending final approval by a vote of the entire University faculty.

Drexel University Policy on Access to Computers and Computer Software

DRAFT

All members of the academic community have certain privileges and responsibilities. Privileges include free and open access to many educational tools and resources. In return, each individual is expected to act in responsible ways in the handling of these tools and resources.

All members of this community -- faculty, students, and administrators -- owe each other respect for their individual work. Plagiarism (the copying of someone else's work) or the destruction of the work of another are breaches of acceptable conduct within the academic community.

The use of the equipment or the exploration of the software of another member of the community without express permission is trespassing and an invasion of privacy. Copying of software without the permission of the developer of that software is theft of intellectual property and the University does not condone it.

Failure to live up to the above standards may lead to disciplinary action.

In addition to being in violation of the code of the academic community, copying of software which is protected by copyright or trade secret law is illegal and may be punishable under §3930 (Theft of Trade Secrets) of the Crimes Code of PA. It may also be in violation of the federal Copyright Act and the purchaser's sales agreement. Violations of state or federal laws may be prosecuted by local, state, or federal law enforcement agencies.

In light of the above, Drexel University does not condone and takes the strongest stand against theft or misuse of intellectual property.

Relevant PA Law on Computer Abuse

As computer owners, there are two pertinent Pennsylvania laws about which you should know: Theft of Trade Secrets and Unlawful Use of Computer. Although there is not yet a federal law on computer crime, over 40 federal statutes are now being used to prosecute federal computer-related crimes.

18 Pa. C. S. A. §3930. Theft of Trade Secrets.

(b) Misdemeanor of the first degree. -- A person is guilty of a misdemeanor of the first degree if he, with intent to wrongfully deprive of, or withhold from the owner, the control of a trade secret, or with intent to wrongfully appropriate a trade secret for his use, or for the use of another:

(1) unlawfully obtains possession of, or access to, an article representing a trade secret; or

(2) having lawfully obtained possession of an article representing a trade secret, or access thereto, converts such article to his own use or that of another person, while having possession thereof or access thereto makes, or causes to be made, a copy of such article, or exhibits such article to another.

18 Pa. C.S.A. §3933. Unlawful Use of Computer.

(a) Offense defined. A person commits an offense if he:

(1) accesses, alters, damages or destroys any computer, computer system, computer network, computer software, computer program or data base or any part thereof, with the intent to interrupt the normal functioning of an organization or to devise or execute any scheme or artifice to defraud or deceive, or control property or services by means of false or fraudulent pretenses, representations or promises; or

(2) intentionally and without authorization accesses, alters, damages or destroys any computer, computer system, computer network, computer software, computer program or computer data base or any part thereof.

(b) Grading. -- An offense under subsection (a) (1) is a felony of the third degree. An offense under subsection (a) (2) is a misdemeanor of the first degree.

Explanation of Penalties

The maximum penalty for a felony of the third degree in Pennsylvania is seven years imprisonment and $15,000 in fines with restitution to the victim (in criminal cases) or damages (in civil cases).

The maximum penalty for a misdemeanor of the first degree in Pennsylvania is five years imprisonment and $10,000 fines with restitution or damages.

A conviction for either a felony or a misdemeanor becomes a matter of public record and, as such, could be available to future employers. In many states, a person convicted of a crime cannot be bonded and may suffer loss of certain civil rights. Either type of conviction, especially in the area of information handling, may interfere with an individual's ever being able to obtain a security clearance. A future conviction, of any type, will label that individual as a second offender and bring about all the restriction of rights and employment opportunities which come with that status. The potential for imprisonment is also significantly increased by this status.

Both the District Attorney's office of the City of Philadelphia and the Federal Bureau of Investigation are greatly concerned about the extent and nature of present offenses and are even more fearful of future occurrences as more and more services are computerized. They are, therefore, anxious to prosecute and establish deterents at this time. Their ability to identify and convict offenders has greatly increased. The Philadelphia District Attorney's Office has emphasized the fact that student status in no way will protect an individual from prosecution to the full extent of the law.

Students should be aware that prosecution in these cases includes the seizure of computer equipment used to commit the offense in question.

Example Situations

The following are two sets of examples dealing with legal and ethical questions involving the use of computers and computer hardware. Each case is intended to present a situation which might easily occur on any university campus. After each situation is presented, the probable consequences of that action are stated.

These examples are presented to help individual members of the university community make informed decisions about their own actions in regard to the use of computers. One set of examples has been prepared for students, another for faculty.

The examples specifically prepared for faculty contain situations which fall into the realm of faculty activities and which are probably not relevant to students. They may, however, also be relevant to staff who supervise student work.

The student examples are also included in your packet, since the same legal and ethical sanctions apply to you.

Examples for Students

Case 1: A student offers to make you a copy of Micosoft BASIC for $5. You pay the $5 and receive the copy.

You are in violation of the PA law on Theft of Trade Secrets since you have unlawfully obtained this copy. If you say that you thought this was a fair price for the package, the law would not accept this excuse on the grounds that any reasonable person would know this could not be the fair market price.

Case 2: A student offers to make you a copy of Microsoft BASIC for free. You accept it.

The consequences would be the same whether you bought the copy from the other student or you got it for free. If you claim that you thought this software was in the public domain, your claim would probably not be accepted, again on the grounds that a reasonable person would know that this could not be the case.

Case 3: You see a student selling other students the right to copy an expensive software package that she has just purchased. You do not report her.

Failure to act is not against the law. Even though you observe an illegal act, you are not ordinarily required to report that act. If, however, you help to plan an illegal act, you are considered to be guilty of that act.

Case 4: You copy another student's work onto your diskette then print out a copy and present it as your own work.

This is clearly plagiarism and would be dealt with through the normal judicial channels within the Office of Student Affairs.

Case 5: You manage to access the computer which contains the University's master schedule and change the access passwords.

You will be in violation of the PA law on Unlawful Use of Computer since you have altered a computer program "with the intent to interrupt the normal functioning of an organization." This is a serious crime regardless of your intent.

Case 6: You purposely scramble the software on the disk of another student in order to destroy that student's work.

> You are in violation of PA law on Unlawful Use of Computer inasmuch as you have "intentionally" damaged computer software. The injured student might bring charges against you through the student judicial process.

Case 7: You buy a terrific program by mail from a small company in Minnesota. You're the only one around who has it, and several people are willing to pay you for it. You sell it for a small fee even though the program has been copyrighted by the author.

> You are guilty of selling software without an appropriate license. If the program is copyrighted, selling it is beyond the fair use clause of the Federal Copyright Act. You may have also broken a contractual agreement with the original owner. (Breaking the seal on a software package often entails the acceptance of a contractual agreement.)

Case 8: You buy a copyrighted software program and allow your friends to copy it. You do not receive anything in return for giving it to them.

> You are still in violation of the Federal Copyright Act. The copyright infringement is the same whether you give it away or sell it. All copyright violations are federal offenses.

Case 9: You are working with a professor on a project which involves use of the Macintosh development system. The professor has you read some of the documentation for the system so that you can continue your work. You copy out some of the most interesting parts and share your notes with a friend.

> You are probably in violation of the PA law on Theft of Trade Secrets and/or the Federal Copyright Act.

Case 10: You buy a software package, then find you don't need it. You sell it to a friend.

> Unless the licensing agreement on the package expressly forbids it, you are free to sell the software. It's making the copy that is illegal. You may not make and sell a copy. You may not make a copy for yourself then sell the original.

Examples for Faculty

Case 1: A student hands in an assignment which is programmed in a language which has not yet been marketed to the public. You are reasonably certain that the student acquired this software illegally.

> You are not legally bound to act. The University is not legally required to assume in loco parentis responsibility for its students. However, as a professor, you have a moral responsibility to speak to the student. The issue of academic honesty is involved and you should refer the matter to the Office of Student Affairs.

Case 2: You, as a faculty member, knowingly give out and require your students to use illegal software.

> You are in violation of the Federal Copyright Act and/or the PA law on Theft of Trade Secrets. The University will be liable in this case because you are acting, in your teaching capacity, as an agent of the University. The University may also act without reference to federal or state law if, in the considered opinion of University administration, your action is injurious to the students involved.

Case 3: You wish to explore a pre-release version of a specific software package. You sign a non-disclosure agreement before that software is given to you for examination. You then allow some students to use the package with you.

> You are in violation of the non-disclosure agreement. The University may chose to act in this case. You may also be in violation of the PA law on Theft of Trade Secrets and/or the Federal Copyright Act.

Case 4: You sign a non-disclosure agreement as in the above case. Although you do not offer the software or documentation to students, you leave it out where they can copy it.

> You are probably liable as above for not taking adequate precautionary measures. You must exercise extreme care in dealing with such materials.

Case 5: You buy a software program and make copies for your students.

You are in violation of the Federal Copyright Act. If the University knows that you are doing this, the University will be liable since you are acting as an agent of the University. Whereas an individual is unlikely to be sued, a large institution is a more attractive target in that it has sufficient funds to make the case profitable to a successful plaintiff that wished to make an example of a specific case.

Case 6: One student gets some illegal software and that software is then disseminated throughout the campus on a one-to-one basis.

All students involved could be guilty of a conspiracy to violate the PA Theft of Trade Secrets law and/or the Federal Copyright Act. The University is probably not legally responsible in this case, although there is definitely a moral responsibility involved if the University knows this is going on but does not try to make students aware of the unethical nature of their behavior.

Federal Copyright Legislation

Federal copyright legislation is complex and the laws themselves are often difficult to read. The following exerpts are presented to point out key aspects of the laws as they relate to computer use.

In the original document, each statement is followed by a series of citations of legal precedents and, in some cases, comments on the case inpoint. All references to cases are deleted in the excerpts presented below.

Criminal Infringement of Copyright[1]

1. Computer programs, databases, and compilations are copyrightable. . . .[2]

2. [Federal law] 17 U.S.C. §506(a) creates the offense of willful infringement of copyright. The section's original penalties (fines up to $25,000 and one year's imprisonment for a first offense, doubled for subsequent offenses), in 1982 were dramatically increased. . .[with] imposition of fines up to $250,000 and terms of imprisonment up to five years.

3. Infringement must be 'willful'. . . .Willfulness can be established by circumstantial evidence such as labelling and cost. . .despite proof that defendant relied upon legal advisors who assured him his acts did not constitute infringement. . . .

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[1] Excerpted with author's consent from "Outline of Computer-Related Crimes," by Gail Thackeray, Assistant District Attorney, Philadelphia. Copyright ©1984, Gail Thackeray. All rights reserved.

[2] Editor's note: According to Copyright Office Circular R61 (Copyright Registration for Computer Programs), "Copyright protection extends to the literary or textual expression contained in the computer program. Copyright protection is not available for ideas, program logic, algorithms, systems, methods, concepts, or layouts.)

4. Although the infringement must be "for purposes of commercial advantage or private gain", [the law] does not require proof of actual profit. . . .The commercial advantage or private gain need not accrue to each individual or corporate co-conspirator. . . .

5. In addition to fines and imprisonment, a judicial finding of "willful" infringement allows the copyright owner in a civil infringement action to elect recovery of statutory damages up to $50,000. . .instead of the actual damages suffered and profits attributable to the infringement. . . . Individuals (including corporate officers) are personally liable, if they have the ability to supervise, a financial interest in, or participate in the infringing activity. . . .

6. Conviction under [this law] also allows the court to order forfeiture, destruction, or other dispositon of the infringing copies -- as well as of the implements, devices, or equipment used in their manufacture. . . .

7. Conviction under §506 (a) will not preclude conviction under other criminal statutes. . . .

8. Each instance of infringement in a course of conduct can give rise to separate punishment, and in one case, four years' imprisonment was held not to be a cruel or unusual sentence. . . .

9. Criminal proceedings must be commenced within three years after the cause of action arises. . . in a series of acts, the statute of limitations begins to run on the date of the last infringing act. . . .

Drexel University
Microcomputing Program
(215) 895-2203

Drexel University • Philadelphia, Pennsylvania 19104

October 1, 1984

Dear Mac User:

As the Macintosh becomes a part of your everyday life, you will become part of the high-tech, microcomputing world. With this new role come certain restrictions and responsibilities, both moral and legal. It is important for you to understand what the laws are and what the University expects in terms of your use of computing equipment.

The attached materials have been prepared for students, faculty, and staff at Drexel University in order to help them make decisions and guide their own behavior in regard to the use and possible misuse of computers and computer software.

Included are relevant passages from the two Pennsylvania state laws which relate to computer use, a series of example situations which address the legality and/or ethics of computer-related actions, and an explanation of relevant aspects of the Federal Copyright Act as it relates to computer programs.

Please read all these materials carefully. Discuss them with your family and friends. If you have any questions about these materials, call the Micro Hotline (x1766). Remember, ignorance of the law is no excuse.

Sincerely,

Brian L. Hawkins
Director, Microcomputing Program

attachments

Drexel University

Microcomputing Program
(215) 895-2203

Drexel University • Philadelphia, Pennsylvania 19104

October 1, 1984

Dear Faculty and Staff Mac Users:

For many of us, working with the Macintosh is making our daily lives easier and more enjoyable. However, there are some restrictions and responsibilities, both moral and legal, which are specific to the use of this new technology. It is important for you to understand what the laws are and what the University expects in terms of your use of computing equipment.

The attached materials have been prepared for students, faculty, and staff at Drexel University in order to help them make decisions and guide their own behavior in regard to the use and possible misuse of computers and computer software.

Included are the Drexel University policy on access to computers and computer software, relevant passages from the two Pennsylvania state laws which relate to computer use, a series of example situations which address the legality and/or ethics of computer-related actions (students do not receive Examples for Faculty section), and an explanation of relevant aspects of the Federal Copyright Act as it relates to computer programs.

Please read all these materials carefully. Discuss them with members of your department. If you have any specific questions about these materials, call Shirley Smith, Special Projects Coordinator for the Microcomputing Program (x2667).

Sincerely,

Brian L. Hawkins
Director, Microcomputing Program

attachments